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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,043	05/17/2001	Philip Charles Clark	713-484	3878
7590	06/09/2004		EXAMINER	
<b>Lowe Hauptman Gopstein</b> Gilman & Berner Suite 310 1700 Diagonal Road Alexandria, VA 22314				HARMON, CHRISTOPHER R
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 06/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/856,043	CLARK, PHILIP CHARLES	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christopher R Harmon	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-7, 14, 16-18 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-7, 14, 16-18 and 33-37 is/are rejected..
- 7) Claim(s) 38 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
  - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 14 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Hirtl et al. (US 5,884,828).

Hirtl et al. disclose an explosively operated tool comprising housing 1, barrel assembly 4, piston 6, recoil mass/dampening device 17 for absorbing recoil, braking elements 14 and 15; spring 23 is a part of the resetting mechanism which returns piston 6 to its original position and independently from braking elements 15 and 10; see column 4, lines 3-6.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-7, 16-18, 33-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirtl et al. (US 5,884,828) in view of Jochum et al. (US 5,538,172).

Hirtl et al. do not directly disclose a engaging means for engaging the piston in a forward position and displacement means for rearwardly displacing the engagement means to thrust the piston rearwardly, however Jochum et al. teach means for moving piston to the rearwards position comprising engagement means 10; catching element 12; potential energy source 11 and recoil/resetting housing 8. Jochum et al. directly teach gripping means comprising balls 10 and inclined surface of flexible cage/leaf spring 11 for gripping piston 1 which are thrusted rearwardly and forcing piston 1 back with the recoil of housing 8.

It would have been obvious to one of ordinary skill in the art to combine the teachings of Jochum et al. with the invention of Hirtl et al. in order to provide for a gripping means for arresting/returning the piston.

#### ***Response to Arguments***

5. Applicant's arguments filed 4/6/04 have been fully considered but they are not persuasive.

Regarding claim 14, the resetting mechanism of Hirtl including a spring 23 which resets piston 6 inside barrel assembly 4, see column 4, lines 3-6. Figure 1 shows spring 23 to abut flanges of barrel assembly 4. Thus all members of this resetting mechanism are connected (not independently operated) for this operation to be performed.

Regarding claim 36, braking elements 14 and 15, effectively catch and stop the piston in both a forward and rearward direction.

Regarding claims 2-7 and 16-18, flexible cage/inclined surface 11 acts upon engagement means 10 arresting the piston and forcing them rearwardly. Potential energy is stored as the cage flexes to accommodate the engaging balls 10.

Regarding the latch of claim 17, Jochum et al. do not expressly state a latch, however the element which contacts the balls 10 and forces them into and retains them in the flexible cage 11 is considered a latch.

Regarding the engagement means 10, they are clearly moveable; acted upon by leaf springs 11.

Regarding separate braking elements and engagement means; see braking means 14 and 15 taught by Hirtl paragraph 2 above.

#### ***Allowable Subject Matter***

6. Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SCOTT A. SMITH  
PRIMARY EXAMINER